

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

JAN 06 2005
ARLEN B. COYLE, CLERK
By Deputy

WATSON AND MARY SIMMONS

PLAINTIFFS

VS.

CIVIL ACTION NO. ~~2004-0036-CVM~~

FIRST CHEMICAL CORPORATION, ET AL.

DEFENDANTS

NOTICE OF REMOVAL

**TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF MISSISSIPPI, EASTERN DIVISION**

Honorable Wanda H. Vowell
Post Office Box 34
Ackerman, Mississippi 39735

CHOCTAW COUNTY CIRCUIT CLERK

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ATTORNEY FOR PLAINTIFFS

COME NOW Removing Defendants, First Chemical Holdings Incorporated, ConocoPhillips, Coastal Refining & Marketing Incorporated and Union Carbide Corporation by and through their attorneys of record, Abbott, Simses, and Kuchler, APLC, and give notice that they remove this state court action entitled *Mary and Watson Simmons vs. First Chemical Corporation et al.*, from the Circuit Court of Choctaw County, Mississippi (Civil Action No.

2004-0036-CVM), to the United States District Court for the Northern District of Mississippi, Eastern Division and respectfully submits the following:

1. This action may be removed to the United States District Court for the Northern District of Mississippi pursuant to Title 28 U.S.C. §§ 157, 1331, 1441, 1446, & 1452.
2. This action was commenced on or about September 31, 2004, by the filing of a Complaint in Civil Action No. 2004-0036-CVM in the Circuit Court of Choctaw County, Mississippi. A copy of all process, pleadings, and orders of record in this action are attached hereto as collective Exhibit "A", and are incorporated herein by reference.
3. On August 4, 2003, the named debtors, Watson and Mary Simmons, filed a petition seeking relief under Chapter 13 of the Bankruptcy Code. The petition was filed in the Bankruptcy Court for the Northern District of Mississippi, Eastern Division. A copy of such petition is attached hereto as "Exhibit "B".
4. The above named debtors is in possession of their respective property. Or on about August 11, 2003, an order was issued appointing the Honorable Terre M. Vardman as trustee of the bankruptcy estate and such trustee is qualified and is acting therein.
5. Defendants, were served with process on December 8, 2004. No Defendant was served with process in this matter more than 30-days from the date on which this case is being removed. Accordingly, this Notice of Removal is timely filed in accordance with the provisions of 28 U.S.C. § 1446.
6. This action is one of a civil nature, wherein the United States District Court for the Northern District of Mississippi, Eastern Division, has jurisdiction pursuant to 28 U.S.C. §§ 157, 1331, 1334, & 1452.

7. Pursuant to 28 U.S.C. § 1446(d), all adverse parties are being provided with written notice of this Notice of Removal, and a copy of this Notice of Removal is being filed with the Clerk of the Circuit Court of Choctaw County, Mississippi.

8. This action may be removed to this Court pursuant to 28 U.S.C. §§ 1334(b) & (e), as well as § 1452. Some of the underlying transactions which Plaintiffs allege took place, and the alleged causes of action, occurred and/or accrued before Plaintiffs filed their bankruptcy petition.

9. The claims asserted by Plaintiffs arise in, or are related to, a case under Title 11 of the United States Code. These claims constitute non-core proceedings pursuant to 28 U.S.C. § 157(c)(1); therefore, the Removing Defendants do not consent to the entry of a final order/judgment by the Bankruptcy Court in this cause of action.

10. Plaintiffs' Complaint does not comply with Mississippi Rules of Civil Procedure 8, 9, 10, and 11. Specifically, Plaintiffs' Complaint does not contain basic, fact-specific information known to Plaintiffs at the time of filing, which would demonstrate exposure to any specific benzene product manufactured and/ or supplied by the Defendants. *See* Mississippi Supreme Court Order rendered August 26, 2004, in *Harold's Auto Parts, Inc., et al v. Flower Mangialardi, et al*, No. 2004-IA-01308 SCT, attached hereto as Exhibit "C".

11. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of any Defendant's right to assert any defense or affirmative matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person; (2) improper venue; (3) insufficiency of process; (4) insufficiency of service of process; (5) improper joinder of claims and/or parties; (6) failure to state a claim; (7) the mandatory arbitrability of some or all of

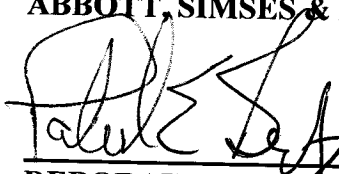
the putative claims; (8) failure to join an indispensable party(ies); (9) waiver; or (10) any pertinent defense available under Miss. or Fed. R. Civ. P. 12, or any applicable federal or state statutes.

WHEREFORE, Removing Defendants file this Notice of Removal and remove this civil action from the Circuit Court of Choctaw County, Mississippi to the United States District Court for the Northern District of Mississippi, Eastern Division. All parties are being provided with written notice of removal, and a copy of this Notice of Removal is being filed with the Clerk of Choctaw County, Mississippi. Plaintiffs are hereby again notified to proceed no further in state court.

This the 6th day of January, 2005.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this date mailed by the United States postal service, postage prepaid a true and correct copy of the foregoing Notice of Removal to Plaintiffs' Counsel of Record and to all known Defense counsel of record via electronic mail to the following addresses:

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- CROWN CENTRAL PETROLEUM CORPORATION;
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- MOTIVA COMPANY;
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- OCCIDENTAL PETROLEUM CORP.;

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This the 6th day of January 2004.



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